IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.3005 OF 2006

Somani & Company Pvt. Ltd. ..Petitioner.

Vs.

Mumbai Municipal Corporation & Ors. ..Respondents.

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Ms. Nita Madhyan i/b M/s. S.M. Associates for the Petitioner.
Ms. A.R. Joshi for the BMC - Respondent No.1.
Ms. S.I. Shah for Respondent No.3.
Mr. G.K. Masand with Ms. S.R. Sawant for Respondent No.4.

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CORAM: DR. D.Y. CHANDRACHUD, J.

6th December, 2006.

P.C. :

1. Rule, made returnable forthwith. Counsel appearing for the Respondents waive service. By consent of the learned counsel and at their request taken up for hearing and final disposal.

2. The Petitioner owns certain immovable property, called Somani Gram which is situated at Ram Mandir Road, Goregaon (West), Mumbai. The Second Respondent is a monthly tenant of the Petitioner. The Petitioner had earlier let out the property to an entity by the name of Shree Venkatesh Processors which in turn

let out the premises to the Third Respondent. The Third Respondent is the Central Warehousing Corporation. The Third Respondent in turn entered into an agreement with the Fourth Respondent. Shree Venkatesh Processors surrendered the tenancy in 1985 in favour of the Second Respondent.

3. The Petitioner received a Special Notice from the Municipal Corporation for revision of the rateable value for the period 2001-02. This appears to have been on the basis that after the enactment of the Maharashtra Rent Control Act, 1999, the Fourth Respondent who was in actual occupation of the premises was not a protected tenant. The Petitioner lodged a complaint which was disposed of after giving an opportunity of a hearing to the Petitioner. Aggrieved by the order of the Investigating Officer confirming the rateable value of the property at Rs.11,42,955/-, the Petitioner filed an appeal under Section 217 of the Mumbai Municipal Corporation Act, 1888 before the Small Causes Court, being Municipal Appeal 485 of 2004, which is pending. The Third Respondent had also filed an appeal under Section 217 of the Mumbai Municipal Corporation Act, 1888 in which an application for waiver came to be rejected by the Chief Judge of the Small

Causes Court. A writ petition filed before this Court was dismissed on 24th November, 2005. The Third Respondent did not deposit the property taxes despite the dismissal of the petition. On 27th February, 2004, the Petitioner addressed a communication to the Third Respondent calling upon the Third Respondent to deposit the property taxes. The Second Respondent has instituted a suit for eviction against the Third and Fourth Respondents which is pending before the Small Causes Court.

4. By a communication dated 14th March, 2005 the Municipal Corporation informed the Petitioner of the bifurcation of the property taxes in respect of the portion that forms the subject matter of the agreement between between the Third and Fourth Respondents on one hand and the portion which is in the occupation of the Petitioner, on the other hand. The bifurcation is to the following effect :

	R.V.	Six monthly taxes
1) The portion occupied by M/s. Han Motors (I) Pvt. Ltd.	634560/NPA (NR)	356940/-

2) Remaining portion occupied by Owner	508395/NPA (NR)	285971/-
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TOTAL	1142955	642911

Therefore Yearly Tax w. e. f. 01-4-2001. Rs.1285822/-

5. On 29th August, 2006 the Municipal Corporation addressed a letter to the Petitioner calling for a deposit of the property taxes in the amount of Rs.45,29,397/- pertaining to the period upto 30th September, 2006. By a further communication dated 16th November, 2006 the Petitioner has been called upon to deposit an amount of Rs.52,09,675/- pertaining to the period upto 31st March, 2007 failing which the Corporation has stated that coercive action would be taken.

6. The submission of the Petitioner is that the break up which has been furnished by the Municipal Corporation by its letter dated 14th March, 2005 (Exh. C) shows that the property taxes in respect of the portion forming the subject matter of the agreement between the Third and Fourth Respondents is distinct from the property taxes payable in respect of the property occupied by the

Petitioner. The case of the Petitioner is that the enhancement in the property taxes has been occasioned only as a result of the transaction between the Third and Fourth Respondents and since the Fourth Respondent is not a protected tenant within the meaning of the Maharashtra Rent Control Act, 1999. As a result it has been submitted that the property tax has been increased from Rs.3,26,215/- to Rs.15,93,780/- with effect from 1st April, 2001. In sum and substance the contention of the Petitioner is that the Petitioner should not be made to suffer on account of the transaction that was entered into between the Third and Fourth Respondents which was without the consent of the Petitioner. Hence, it has been submitted that the Municipal Corporation ought to have taken steps for the recovery of the property taxes from the Fourth Respondent who is in occupation of the premises.

7. An affidavit in reply has been filed in these proceedings by the Fourth Respondent. The Fourth Respondent claims to be a dealer in cars. It has been stated in the reply that on 23rd March, 2001 an agreement was entered into between the Third and Fourth Respondents by which the Third Respondent agreed to provide storage space of 1992 sq. mtrs. to the Fourth Respondent

at its Central Warehouse at Goregaon. The Fourth Respondent has been required to pay storage charges of Rs.147.33 per sq. mtr. to the Third Respondent apart from the supervision charges. The contention of the Fourth Respondent is that it has no right, title and interest of any nature whatsoever in the property and the premises are being used as a storage facility. The agreement provides that there would be joint control both of the Third and Fourth Respondents. A suit has been instituted by the Second Respondent alleging that the Third Respondent has illegally sublet a portion of the warehouse to the Fourth Respondent. The case of the Fourth Respondent is that the premises continue to be in possession and under the control of the Third Respondent. The Third Respondent had addressed a letter dated 5th February, 2005 calling upon the Fourth Respondent to pay an amount of Rs.28,55,520/- towards enhanced property taxes. Subsequently by a letter dated 4th October, 2005 the Fourth Respondent was informed by the Third Respondent that the demand was being withdrawn. By the letter, the Fourth Respondent was, however, directed to pay storage charges on an enhanced tariff at the rate of Rs.200/- per sq. mtr. per month with effect from 1st November, 2004.

8. The narration of facts in the earlier part of the judgment will demonstrate that the Municipal Corporation has increased the rateable value and consequently revised the property taxes with effect from 1st April, 2001 on the ground that a transaction was entered into between the Third and Fourth Respondents and that the Fourth Respondent is not a protected tenant within the meaning of the Maharashtra Rent Control Act, 1999. Consequently the contention of the Municipal Corporation has been that the standard rent of the premises would not provide an index of the rateable value. Since the appeals are pending before the Small Causes Court, it is not necessary for this Court to make any observation in regard to the correctness of the decision of the Municipal Corporation to revise the ratable value at this stage. However, there is merit in the submission that has been urged on behalf of the Petitioner that the Petitioner ought not to be saddled with the liability to pay property taxes on account of the transaction that was entered into between the Third and Fourth Respondents. The Fourth Respondent contended that it has no right, title and interest in respect of the premises and that under the Memorandum of Agreement dated 23rd March, 2001 there is no

parting of possession by the Third Respondent in favour of the Fourth Respondent. Hence, according to the Fourth Respondent, it is the liability of the Third Respondent to pay property taxes.

9. Now under Section 146(1) of the Mumbai Municipal Corporation Act 1888 property taxes shall be leviable primarily upon the actual occupier of the premises upon which the said taxes are assessed, if the occupier holds the premises immediately from the Government or from the Corporation. Under sub section (2) it has been provided as follows :

> "(2) Otherwise the said taxes shall be primarily leviable as follows, namely :-
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> (a) if the premises are let, from the lessor;
> (b) if the premises are sub let, from the superior lessor; and
> (c) if the premises are unlet, from the person in whom the right to let the same vests."

In the event that the premises are let, primarily the liability is of the lessor, while if the premises are sublet the primary liability is that of the superior lessor.

10. Section 209 of the Act provides as follows :

> "209. When occupiers may be held liable for payment of property taxes. - (1) If the sum due on account of any property-tax remains unpaid after a bill for the same has been duly served on the person primarily liable for the payment thereof and the said person be not the occupier for the time being of the premises in respect of which the tax is due, the Commissioner may serve a bill for the amount on the occupier of the said premises, or, if there are two or more occupiers thereof, may serve a bill on each of them for such portion of the sum due as bears to the whole amount due the same ratio which the rent paid by the occupier bears to the aggregate amount of rent paid by them both or all in respect of the said premises.
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> (2) If the occupier or any of the occupiers fails within fifteen days from the service of any such bill to pay the amount therein claimed, the said amount may be recovered from him in accordance with the foregoing provisions.
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> (3) No arrear of a property tax shall be recovered from any occupier under this section, which has remained due for more than one year, or which is due on account of any period for which the occupier was not in occupation of the premises on which the tax is assessed.
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> (4) If any sum is paid by, or recovered from an occupier under this section, he shall be entitled to credit therefore in account with the person primarily liable for the payment of the same."

The provisions of Section 209 lay down that if a sum due on account of any property tax has remained unpaid after a bill for the same has been served on a person primarily liable for the payment thereof and the said person be not the occupier of the

premises, the Commissioner is empowered to serve a bill on the occupier of the premises or if there are two or more occupiers on each of them corresponding to the area in their respective occupation. In the present case, it is only lawful, appropriate and proper if the Municipal Corporation having regard to the provisions of Section 146 and Section 209 of the Mumbai Municipal Corporation Act, 1888 causes the demand to be enforced from the actual occupier of the premises. Whether or not the Fourth Respondent is the actual occupier or otherwise need not be determined by this Court in a petition filed by the Petitioner herein. The Petitioner's contention is that the actual occupation of the premises is not with the Petitioner and in respect of the aforesaid contention there cannot be any doubt as to the factual position. Counsel appearing for the Petitioner has stated that the Petitioner had already paid the share of the property taxes in respect of the portion which is in the occupation of the Petitioner and the Petitioner stands by the liability to do so in respect of that portion. The pendency of the suit for eviction against the Third Respondent cannot be a reason for the Third Respondent to withhold payment.

11. Counsel appearing for the Municipal Corporation states that the Municipal Corporation was unable to assess who was the actual occupier of the premises since it is only in the affidavit in reply to these proceedings that a copy of the Memorandum of Agreement dated 23rd March, 2001 between the Third and the Fourth Respondents has been annexed. The Municipal Corporation will now be at liberty to take a decision on the basis of the relevant facts that have come on the record of these proceedings including the Memorandum of Agreement dated 23rd March, 2001 and to issue a notice of demand upon the actual occupier. In order to facilitate a decision being arrived at by the Assessor and Collector, the parties shall appear before the Assessor and Collector for a hearing on 13th December, 2006 at 11.0 a.m. on which date both the Third and Fourth Respondents will be at liberty to produce such material as they seek to rely upon. The Assessor and Collector shall make a determination of who is the actual occupier within the meaning of Section 209 of the Mumbai Municipal Corporation Act, 1888 and thereupon issue a notice of demand in accordance with law. While disposing of the Petition it is clarified that the Municipal Corporation would be at liberty to take necessary steps in accordance with law against the

actual occupier in order to enforce the recovery of the property taxes in respect of the area in the actual occupation of the occupier.

The Petition is accordingly disposed of.

There shall be no order as to costs.